

Wisconsin Institute for Law and Liberty: DPI hands over documents in open records lawsuit

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Hearing cancelled, WILL attorneys reviewing the documents

The News: As a result of WILL's open records lawsuit, the Wisconsin Department of Public Instruction (DPI) has turned over documents pertaining to the Every Student Succeeds Act (ESSA). There is no longer a hearing before Dane County Judge Richard Niess and WILL attorneys are in the process of reviewing the records to determine if the production fulfills the records request.

On Thursday, February 7, 2019, WILL [sued](#) the DPI, the state education agency, in Dane County Circuit Court to obtain documents that would help determine whether DPI is illegally implementing the Every Student Succeeds Act.

Upon receiving the complaint, Judge Richard Niess immediately ordered the DPI to "release the records" or appear before the Judge on February 26 in the Dane County Courthouse to explain why they cannot do so. The hearing is now cancelled.

The Quote: WILL Deputy Counsel Tom Kamenick said, "WILL is pleased to announce that as a result of its lawsuit, DPI has turned over hundreds of pages of documents pertaining to the Every Student Succeeds Act. In the next week, WILL attorneys will be carefully reviewing them to determine if SPI /DPI are illegally implementing federal law, ESSA, without the proper state authority. Further legal action could be warranted.

"It is deeply disappointing it has taken DPI months to comply with our request. The public has a right to know how DPI is spending their money and whether any laws are being violated. Hopefully next time, DPI will do a better job at promptly responding to open records requests to avoid litigation."

Lawsuit Background: Last August, WILL attorneys filed an open records request to ensure that DPI is not breaking state law by unilaterally implementing ESSA. WILL asked for communications between DPI and school districts regarding the Every Student Succeeds Act, among other documents. After repeated follow-ups by WILL, DPI responded on November 13, 2018 partially denying the request. WILL promptly amended its request by narrowing the search parameters.

During that time, however, WILL learned that [DPI sent preliminary reports](#) to school district superintendents about ESSA, but required them to keep the documents from the public - and even their school boards. These are the very documents that WILL has tried to obtain. DPI could be applying a federal accountability system to schools and districts without having any state legal authority to do so. Just weeks ago, DPI sent superintendents the final "[joint federal notification packets](#)" on ESSA - subject to the same illegal embargo until March 5th.

State law establishes a "presumption of complete public access to government records" and gives the public the "right to inspect any record", subject to exemptions that do not apply here. The Attorney General of Wisconsin has recommended that ten working days are a reasonable response time for an open records request. [A 2017 report](#) found that DPI's average response time for a request was 8.9 business days.